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## Attorneys for Plaintiffs

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ANTHONY PETRU and MARCUS MATHIS, )  
Individually and on Behalf of All Others )  
Similarly Situated, )  
Plaintiffs, )  
v. )  
APPLE INC.; HACHETTE BOOK GROUP, )  
INC.; HARPERCOLLINS PUBLISHERS, INC.; )  
MACMILLAN PUBLISHERS, INC; PENGUIN )  
GROUP (USA) INC.; and SIMON & )  
SCHUSTER, INC., )  
Defendants.)  
No. C11-03892 EMC  
DECLARATION OF JEFF D.  
FRIEDMAN IN SUPPORT OF  
PLAINTIFFS' OPPOSITION TO  
SPECIALY APPEARING  
DEFENDANTS' ADMINISTRATIVE  
MOTION TO ENLARGE TIME TO  
RESPOND TO COMPLAINT  
ACTION FILED: August 9, 2011

1 I, JEFF D. FRIEDMAN, declare as follows:

2 1. I am an attorney duly licensed to practice before all of the courts of the State of  
 3 California. I am a partner with the law firm of Hagens Berman Sobol Shapiro LLP, one of the  
 4 counsel of record for Plaintiffs in the above-entitled action. I have personal knowledge of the  
 5 matters stated herein and, if called upon, I could and would competently testify thereto.

6 2. Plaintiffs filed *Petru et al. v. Apple Inc. et al.*, No. C11-03892 EMC (N.D. Cal.)  
 7 (the “*Petru*” Action) after months of fact investigation, including economic analysis, on August 9,  
 8 2011, which was subsequently assigned to this Court.

9 3. The *Petru* Action alleges that starting in or around January 2010, five of the six  
 10 largest book publishers, along with Apple Inc., agreed and coordinated their activities to increase  
 11 and stabilize the prices of electronic books (“eBooks”) in the United States. The Complaint  
 12 extensively alleges facts concerning the structure of the publishing industry, the eBook market,  
 13 and the unprecedented change in pricing and structure effectuated by Defendants’ conduct in the  
 14 early part of 2010. The Complaint further alleges that through a series of agreements and  
 15 contractual terms, Defendants were able to increase the prices of some of the most popular eBooks  
 16 – ***by thirty to fifty percent overnight.*** In addition to increasing prices to supracompetitive levels,  
 17 Defendants also stabilized the prices of these books by agreeing to standardized pricing formulae.

18 4. After filing the Complaint, scores of consumers contacted counsel for the *Petru*  
 19 Plaintiffs describing economic impact caused by increased eBook prices, such as the examples set  
 20 forth in Plaintiff’s Opposition.

21 5. The filing of the *Petru* Action on August 9, 2011 resulted in national media  
 22 attention. The next day, August 10, 2011, a series of copycat complaints started to be filed in the  
 23 Southern District of New York. On August 16, 2011, counsel for one of these copycat complaints  
 24 filed a motion before the Judicial Panel for Multidistrict Litigation (“JPML”), requesting to  
 25 transfer all pending cases to the Southern District of New York. These cases largely mirror the  
 26 *Petru* Action.

27 6. My firm’s most recent search for cases filed to date related to the *Petru* Action  
 28 shows cases have been filed in two districts – the Northern District of California (five cases) and

1 the Southern District of New York (eight cases). Of the eight cases filed in the Southern District  
 2 of New York, five have been filed by Lovel Stewart Halebian Jacobson LLP: *Grover et al. v.*  
 3 *Macmillan et al.*, No. 11-cv-5576; *Evans et al. v. Macmillan et al.*, No. 11-cv-5609; *Meyer et al. v.*  
 4 *Macmillan et al.*, No. 11-cv-5896; *Meyer v. Macmillan et al.*, No. 11-cv- 5898; and *Lingofelt v.*  
 5 *Macmillan et al.*, No. 11-cv- 5976.

6 7. Defendants' counsel first contacted the *Petru* Plaintiffs' counsel telephonically on  
 7 August 15, 2011, and we spoke again on August 22, 2011. The parties also exchanged several  
 8 emails. Defendants initially requested the same ten-month stay that they are seeking here.  
 9 Plaintiffs' counsel told one of Defendants' counsel, Paul Eckles, that Plaintiffs would not agree to  
 10 such an extended stay and repeatedly informed Mr. Eckles that while the *Petru* Plaintiffs would be  
 11 open to an extension of time to respond, they would not agree to stay the matter pending the  
 12 Multidistrict Litigation proceedings. The next scheduled JPML session during which Plaintiffs  
 13 Jeffrey Evans, Clarissa Weiss, Shilpa Grover and Fredrick A. Press' Memorandum in Support of  
 14 Motion to Transfer and Consolidate Related Antitrust Actions to Southern District of New York  
 15 Pursuant to 28 U.S.C § 1407 in *In Re Electronic Books Antitrust Litig.*, MDL No. 2293, will be  
 16 heard is December 1, 2011, at the Tomochichi United States Courthouse in Savananaah, Georgia.  
 17 See Judicial Panel on Multidistrict Litigation, Hearing Info, available at [http://www.jpml.uscourts.gov/Hearing\\_Info/hearing\\_info.html](http://www.jpml.uscourts.gov/Hearing_Info/hearing_info.html) (last visited August 23, 2011).

19 8. On August 24, 2011, counsel for the *Petru* Plaintiffs informed Defendants that  
 20 Plaintiffs were going to seek to transfer or stay the copycat complaints filed in the Southern  
 21 District of New York and asked Defendants to join that motion based on the first-to-file rule.

22 9. The next day, August 25, 2011, Defendants responded instead by suggesting to  
 23 extend their response date to December 15, 2011, or whenever Defendants responded to a  
 24 complaint in any related action.

25 10. On the same day, even though Defendants' last proposal requested an undue length  
 26 of time to respond, Plaintiffs still offered an additional two weeks to extend the time for  
 27 Defendants to respond.

11. Also on August 25, 2011, Plaintiffs sought clarification of whether Defendants intended to use this additional time to seek a stay or respond substantively to the *Petru* Action. Instead of responding to this request for clarification, Defendants filed this “emergency” motion.

12. Mr. Eckles repeatedly states in his declaration that I did not express any “urgency” over Defendants’ date to respond. From this it seems Mr. Eckles is under the impression that Plaintiffs are the ones obligated to respond to their own complaint – a proposition to which no response is necessary.

13. Attached hereto is a true and correct copy of Exhibit 1: Proposed Intervenor Anthony Petru's Memorandum [of] Law in Support of Motion to Intervene and Motion to Transfer or, in the Alternative, Stay Action.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 30th day of August 2011, at Berkeley, California.

s/Jeff D. Friedman  
JEFF D. FRIEDMAN

## **CERTIFICATE OF SERVICE**

I hereby certify that on August 30, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses registered, as denoted on the attached Electronic Mail Notice List. I hereby certify that I have caused the foregoing document or paper to be mailed via United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/Jeff D. Friedman  
**JEFF D. FRIEDMAN**

## Mailing Information for a Case 3:11-cv-03892-EMC

### Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

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### Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)